02-0427
FILED

Aug 21, 2002

NO. 02-0427

In the Supreme Court of Texas

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,

Petitioners,

v.

FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF EDUCATION, ET AL.,

Respondents.

EDGEWOOD INTERVENORS' RESPONSE TO PETITIONERS/APPELLANTS' PETITION FOR REVIEW

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STATEMENT OF THE CASE

Nature of the case:	State Respondents and Edgewood Intervenors are seeking to uphold the declaration by the trial court and appellate court that the $1.50 cap on a school district's tax rate for "maintenance and operations," as determined by the Legislature in Texas Education Code §45.003(d), is not an unconstitutional state ad valorem tax in violation of Article VIII §1(e) of the Texas Constitution.
Trial court:	The Honorable Scott McCown, 345th Judicial District Court, Travis County.
Disposition in trial court:	The trial court declared for the State Respondents and Edgewood Intervenors and dismissed Petitioners' lawsuit at the pleading stage for failure to state a claim because a small percentage of school districts were taxing at the $1.50 cap.
Parties in court of appeals:	All parties in the trial court were parties to the appeal. While the case was on appeal, Felipe Alanis, the current Commissioner of Education, was substituted for Jim Nelson, the former Commissioner of Education, pursuant to Rule 7.2(a) of the Texas Rules of Appellate Procedure.
Court of Appeals opinion:	*West-Orange Cove Consol. Indep. Sch. Dist. et al. v. Alanis et al.*, No. 03-01-00491-CV, 2002 WL 534582, (Tex. App. Austin April 11, 2002, pet. filed) (opinion by Justice Smith, joined by Chief Justice Aboussie and Justice Puryear).
Disposition in Court of Appeals:	The Court of Appeals affirmed the trial court's dismissal of Petitioners' lawsuit. The appellate court affirmed the trial court on the ground that Petitioners had not pled (we assert that they also cannot plead under their facts) that they were required to tax at the highest allowable rate to provide the bare, accredited education.

ISSUES PRESENTED

1. In a case involving settled issues of constitutional law concerning the public school financing system in the State of Texas, which has continually been addressed by the Legislature and upheld by the courts, was the Court of Appeals correct in affirming the dismissal of Petitioners' claims because Petitioners failed to state any cognizable cause of action?

2. Was the Court of Appeals correct in affirming the dismissal of Petitioners' claims on the pleadings because such claims are not ripe for review?

STATEMENT OF FACTS

This suit attempts to reopen the debate over school financing even though the Court has already considered, reviewed and upheld prior similar challenges to the school finance system under Article VIII § 1(e) of the Texas Constitution.[1] The lower courts dismissed Petitioners' suit on the pleadings because Petitioners' suit was not ripe and because it failed to state a cognizable cause of action.

The Texas Constitution requires the Legislature to set the standards for a general diffusion of knowledge and to ensure the financing scheme to fund it. The Legislature has met its constitutional obligation by implementing accreditation criteria for school districts and a financing scheme. The Supreme Court, in turn, has deferred to the Legislature's determination of what constitutes a general diffusion of knowledge and what it costs to fund it. This suit requests not only that the Court overturn past precedent but also wade into what has traditionally been considered a legislative responsibility.

SUMMARY OF THE ARGUMENT

Petitioners claim a cause of action arising out of the *Edgewood* line of cases.[2] They are wrong. The *Edgewood* litigation initially sought to remedy the gross disparity in education created by an inefficient school finance system that relied heavily on local property taxes with no equalization

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[1]Article VIII § 1 (e) of the Texas Constitution provides, "No State ad valorem taxes shall be levied upon any property within this State."

[2]*Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989) (*Edgewood I*); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 498 (Tex. 1991) (*Edgewood II*); *Carrolton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (Edgewood III)*, 826 S.W.2d. 489 (Tex 1992); *Edgewood Indep. Sch. Dist. v. Meno (Edgewood IV)*, 917 S.W.2d 717 (Tex. 1995).

of wealth.[3] That system was found unconstitutional under Article VII §1.[4] Attempts to remedy that violation were later challenged by property-rich districts under Article VIII § 1(e) of the constitution. This Court dealt with those claims, as well as the ongoing claims of the property-poor districts under Article VII § 1 in *Carrolton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (Edgewood III)*, 826 S.W.2d. 489 (Tex. 1992) and *Edgewood Indep. Sch. Dist. v. Meno (Edgewood IV)*, 917 S.W.2d 717 (Tex. 1995). In the present case, employing the standards set out by this Court, the Court of Appeals properly found that Petitioners had failed to plead and could not plead necessary elements of an Article VIII § 1(e) challenge to the school finance system. Petitioners' claim was properly dismissed, and the Edgewood Respondents urge this Court to leave that decision intact by refusing or denying the Petition.

In *Edgewood III* this Court struck down an attempt by the legislature to establish "County Education Districts" (CEDs) as a means of financing public education in a more efficient manner than one which created the prior, unconstitutional disparities between property-rich and property-poor districts. There this Court set forth the standard for determining whether, in the school finance context, a state financing scheme that incorporated local property tax revenue would violate Article VIII § 1(e). When the legislature creates political subdivisions with taxing authority and then "mandates that a tax be levied, sets the rate, and prescribes the distribution of the proceeds, the tax is a state tax, regardless of the instrumentality which the State may choose to use." *Edgewood III*,

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[3] The current Edgewood Respondents were plaintiffs in the original *Edgewood* litigation.

[4] Article VII §1 of the Texas Constitution states, "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

826 S.W.2d 489, 503. The Court found that the CEDs had no "meaningful discretion" in their actions. *Id.*

In *Edgewood IV*, the Court found the current system constitutional under Article VIII § 1(e). Through various mechanisms, local school districts are able to exercise discretion with regard to the local share of school finance. Through other mechanisms, constitutional efficiency through equalization measures is obtained. The $1.50 cap on levies for M&O is one of the latter mechanisms.

Petitioners' claim seeks to continue the challenge made by property-rich districts in *Edgewood IV*, in which this Court found that the $1.50 cap did not constitute a violation of Article VIII § 1(e).

This case, resting as it does on the assertion that the state has imposed an unconstitutional tax, does not raise the issue whether the state currently provides an adequate, efficient system for the general diffusion of knowledge, as required by Article VII of the Constitution. More importantly, it is best left to the Texas Legislature to decide how to define a general diffusion of knowledge and Petitioners have failed to state a cause of action challenging the adequacy of the State's educational mandate. Edgewood Respondents incorporate the arguments set out in the Alvarado Respondents' brief regarding this issue.

ARGUMENT AND AUTHORITIES

I. The Court of Appeals Correctly Held That Plaintiffs Failed to State a Cause of Action

Petitioners present their claim in the form of a tax challenge under Article VIII § 1(e). The Supreme Court has already established the standard for challenging the statewide nature of a tax, stating that "An ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without meaningful discretion." *Carrollton-Farmers Branch*

v. Edgewood ISD, 826 S.W.2d 489, 502 (Tex. 1992). This Court then decided in *Edgewood IV* that the system as it currently exists is not a statewide tax that violates Article VIII. *Edgewood ISD v. Meno*, 917 S.W.2d 717, 738 (Tex. 1995) ("Although financial incentives for property-poor districts and the desire to maintain previous levels of revenue in the property-rich districts may encourage districts to tax at the maximum allowable rate, the State in no way requires them to do so.").

Moreover, the Supreme Court, after holding that the system currently in place does not violate Article VIII of the Constitution, issued a warning in dicta regarding the point at which the tax may violate the Constitution:

> Eventually, some districts may be *forced* to tax at the maximum allowable rate just to provide a general diffusion of knowledge. If a cap on tax rates were to become in effect a floor as well as a ceiling, the conclusion that the Legislature had set a statewide ad valorem tax would appear to be unavoidable because the districts would then have lost all meaningful discretion in setting the tax rate.

Edgewood IV, 917 S.W.2d at 738 (emphasis added).

Petitioners attempt to claim that now the cap has become a "floor" as well as a "ceiling." However, the Court of Appeals correctly found that the only way Petitioners can state their cause of action in this regard is to allege that they are forced to tax at the maximum rate just to provide the state's minimum accredited education. Petitioners failed to do so, and in fact cannot do so, therefore the Court of Appeals correctly dismissed their case.

First, Petitioners cannot allege that they are taxing at the maximum rate because they all provide a homestead exemption, which is a meaningful use of their discretion. Even with the homestead exemption, the record reveals that two of the districts are not yet taxing at the express $1.50 rate.

Second, for the cap to become constitutionally suspect, the district must be *forced* to tax at an effective maximum tax rate of $1.50 just to provide a *minimum accredited education.* The Court of Appeals properly found this to be a necessary element of the claim.[5] Plaintiffs failed to make that claim.

II The Court of Appeals Correctly Held That Petitioners' Claims Are Not Ripe

The lower courts in this case have alluded to Petitioners' inability to make a viable claim, not just because they did not plead an element of their claim but because this claim cannot be pleaded in a way that overcomes a special exception. *See Williams v. Muse*, 369 S.W.2d 467, 470-71 (Tex. Civ. App. Eastland 1963). The Petitioners cannot state a claim until they can show that they are forced to tax at the maximum rate in order to meet the minimum accredited standards mandated by the State. The Petitioners must at least allege that they cannot meet the general diffusion of knowledge standard as that standard has been interpreted by this Court. For the purposes of an Article VIII § 1(e) tax challenge, the Court held that the legislatively-mandated provisions for an accredited education met the Legislature's constitutional obligation to provide for a general diffusion of knowledge. *Edgewood IV*, 917 S.W.2d at 730. The Court accepted that the legislatively-defined level meets the "general diffusion of knowledge" mandate. To suggest, as Plaintiffs do, that this general diffusion of knowledge standard is, or should be, up for grabs would lead this Court into an unwarranted invasion into the Legislature's domain. By embarking on such an inquiry, the Court runs the risk of having to decide the dollar amount necessary to meet the general diffusion of knowledge, a determination

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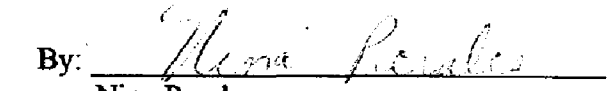
[5] The Court of Appeals did not address that part of Petitioners' burden to show that a given number of districts must have lost meaningful discretion. The Edgewood Respondents suggest, however, that a prospective Plaintiff will have to address the issue in order to maintain a viable claim under the Supreme Court's precedent. *See Edgewood IV*, 917 S.W.2d at 738.

clearly best left to the Legislature. *See Edgewood IV*, 917 S.W.2d at 725-726. In other words, Petitioners can allege a ripe claim under Article VIII § 1(e) only if they convince the Court to abandon its deferential review of legislative activity and to determine for itself a new definition of "general diffusion of knowledge" that raises the floor on the State-mandated education. Petitioners' claim is therefore unripe because Petitioners cannot allege a claim without the Supreme Court reversing its precedents and undertaking a legislative function.

CONCLUSION AND PRAYER

For the foregoing reasons, the Edgewood Respondents urge this Court to refuse or deny the Petition in this case.

Dated: August 20, 2002

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Edgewood Intervenors' Response to Petitioners/Appellants' Petition for Review** has been sent by First Class U.S. Mail on this 20th day of August, 2002, to the following interested parties:

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